IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.212 OF 2007

Smt. Suguna
W/o. Thamil Selvam .. Petitioner

Vs.

1. State of Tamil Nadu,
   Rep. by its Secretary to Government,
   Prohibition & Excise Department,
   Fort St. George, Secretariat,
   Chennai 600 009.

2. The District Collector & District
   Magistrate,
   Tiruvallur District,
   Tiruvallur.

3. The Inspector of Police,
   B7,Vellavedu Police Station,
   Tiruvallur District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus to call for the records of the second respondent in Memo No.10/BDFGISSV/2006 dated 20.11.2006 and quash the same an thereby direct the respondents to produce the body of the detenu, namely, Naveen, S/o. Thamilselvam, now detained at Central Prison-II, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.V. Parthiban

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

P.K. MISRA, J

Mother of the detenu has filed this Habeas Corpus Petition challenging the order of detention dated 20.1.2006 passed by the District Magistrate and District Collector, Tiruvallur District under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) relating to Thiru.Naveen on the allegation that he is a Goonda and it is necessary to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The detenu came to the adverse notice of the police in B7 Vellavedu Police Station Cr.No.299/2006 registered under Sections 323, 324, 506(ii), 307 IPC and B7 Vellavedu Police Station Cr.No.300/2006 registered under Sections 363, 302, 397, 120(b) IPC. Both the cases were allegedly committed on the same day i.e., 19.8.2006 and were under investigation. The ground case, on the basis of which the detention order is subsequently passed, is alleged to have occurred on 21.8.2006, wherein it is alleged that offence under Section 392 IPC has been committed. It is alleged that on the said date at about 6.00 P.M., while the complainant was proceeding to purchase groceries, an unknown person came near to him and put a knife in his neck and shouted that he was Utukottai Naveen and was everybody afraid of him and he was the person who murdered Thirumazhisai Prakash. He further stated that at that time one person, who was coming on a bicycle, on seeing the incident left the bicycle and ran away and four other persons who were also coming towards the complainant Prabhu ran away because of panic. Complaint was made on 22.8.2006 morning, on the basis of which Cr.No.301 of 2006 under Section 392 IPC has been registered. During the course of investigation, the detenu was found in the office of the Village Administrative Officer and was arrested on 22.8.2006 around 11.00 AM and arrest memo was prepared, wherein signature of the detenu and the signature of the witnesses were obtained. In presence of the Village Administrative Officer, the detenu confessed about his involvement in the ground case as well as previous cases and he was arrested and produced before the Judicial Magistrate, Poonamallee on 22.8.2006 and was remanded to judicial custody for 15 days. Subsequently he was subjected to police custody by the order passed by the Judicial Magistrate, Poonamallee. His remand period expired on 4.9.2006 and it was extended from time to time and he was in remand till 23.11.2006. It has been further indicated in the grounds of detention :-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"5(i) I am aware that Naveen is in remand and there is real possibility that he may be enlarged on bail for the offence u/s 392 of IPC by filing bail application in the court. I am also aware that in similar cases, accused are enlarged on bail by the same Court or by the Superior Court after lapse of some time, and it is very likely that he may come out on bail, he will indulge in such further activities in future as well which will be prejudicial to the maintenance of public order and further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order. On the materials placed before me, I am satisfied that the said Naveen is a "Goonda" and that there is a compelling necessity to detain him in order to prevent him from indulging in such acts in future which are prejudicial to the maintenance of public order under provisions of the Tamil Nadu Act 14 of 1982.

5(ii) I am aware that Naveen has been remanded to Judicial Custody by the Judicial Magistrate II, Poonamallee on 22.8.2006. He is a remand prisoner, lodged in the Central Prison, Chennai in Vellavedu police Station Cr.No.301/2006. His remand period is upto 4.9.2006, 18.9.2006, 29.9.2006, 12.10.2006, 26.10.2006, 9.11.2006. It has been extended upto 23.11.2006. But there is a real possibility of bail acceptance and being enlarged on bail by the Court. I am also aware that in cases, bail is granted after lapse of some time and if Naveen is then let to remain at large, he is likely to indulge in such further prejudicial activities in future as well and therefore there is compelling necessity to pass this order of detention with a view to preventing him from indulging in such prejudicial activities in future."

3. The order of detention is being challenged primarily on the following grounds :-

(1) There has been delay in disposal of representation and communication of the result.

(2) There was no material in support of the conclusion that there was real possibility of the detenu being coming out on bail and such inference is merely the ipse dixit of the detaining authority.

(3) The order of detention was passed after three months from the alleged incident and there was no livelink between the alleged incident and the order of detention.

(4) The alleged incident dated 21.8.2006 in connection with which case under Section 392 IPC has been registered related to the question of mere law and order and not public order and, therefore, there is no justification for passing an order of detention, which can be passed only

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

with a view to prevent a person from acting in a manner prejudicial to the maintenance of public order and not otherwise.

(5) The contradictions found in the grounds of detention and the counter affidavit filed by the detaining authority reveals non-application of mind on the part of the detaining authority.

Apart from the above contentions, learned counsel has also contended that there has been several inaccuracies in the translation furnished to the detenu and false cases have been foisted only with a view to detain the detenu.

4. So far as the first contention is concerned, from the chart furnished by the Addl. Public Prosecutor, we find that representation received on 4.12.2006 was rejected on 21.12.2006. The rejection letter was prepared on 26.12.2006 and sent to the detenu on the next day and served on the detenu on 28.12.2006. In the above context, learned counsel for the petitioner has submitted that there has been unexplained delay between the date on which remarks were called for i.e., 5.12.2006 and remarks were received i.e., 18.12.2006.

It is not seriously disputed that remarks were called for by the post. In fact from the chart it appears that representation was received from the Collectorate on 11.12.2006 and thereafter the representation was sent to the Government on 14.12.2006, which would have been obviously again by post. In such circumstances, it cannot be said that there has been undue and unexplained delay between the date on which remarks were called for and the date on which remarks were received.

5. Next contention is relating to preparation of rejection letter. According to the petitioner, when the Minister rejected the representation on 21.12.2006, there is no reason as to why about 5 days time was taken to prepare the rejection letter.

Even though prima facie such a contention appears to be attractive, on deeper scrutiny and on verification, there doesn't appears to be unreasonable delay. 21.12.2006 was a Thursday and the next working day available was 22.12.2006, which was a Friday. 23rd, 24th being Saturday and Sunday and similarly 25th December being holiday for Christmas, rejection letter was prepared on the next available working day i.e., 26.12.2006. In such peculiar circumstances, we are unable to accept the contention of the petitioner that there has been unexplained and unreasonable delay in dealing with the representation.

6. Learned counsel for the petitioner has contended that the detaining authority without any material on record came to the conclusion that there was real possibility of the detenu being coming out on bail and since such conclusion was vitiated, the order of detention should be quashed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. We have already extracted the relevant portion relating to such conclusion. From the narration in para 5, it is apparent that the detaining authority came to the conclusion that there was possibility of the detenu being released on bail after lapse of sometime. It is no doubt true that no bail application had been filed. However, merely because there is no pendency of bail application at the time when the order of detention is passed, it cannot be said that the detaining authority is precluded from coming to the conclusion that there is real possibility of the detenu being released on bail. It is well known that possibility of grant of bail depends on several factors such as nature of allegation, stage of investigation or even non-completion of investigation during the stipulated time. Where the allegations against a particular person are comparatively less serious, such as involvement in offence of less serious nature, possibility of being enlarged on bail always looms large, even if the investigation is not completed. On the other hand, when the allegations are very serious, one may reasonably conclude that before completion of the investigation, possibility of being enlarged on bail is little remote. It is no doubt true that in the present case one of the adverse cases was the alleged commission of offence under Section 302 IPC and, therefore, in view of seriousness of nature of allegation, ordinarily one would not expect grant of bail till completion of investigation.

8. In the present case, it is apparent that the detenu was taken into custody on 22.8.2006 and investigation was still in progress. Therefore, the period of 90 days was on verge of being completed and, thus, there was imminent possibility of the detenu being released on statutory bail in view of the provisions contained in 167(2) proviso of the Code of Criminal Procedure. Keeping in view the aforesaid admitted background, it is obvious that subjective satisfaction of the detaining authority that there is real possibility of the detenu being released on bail is based on materials on record and cannot be characterised as mere ipse dixit of the detaining authority. This contention is therefore liable to be rejected.

9. Next contention of the petitioner is to the effect that since the alleged ground case occurrence has taken about three months back, there is no live-link between such incident and the order of detention and, therefore, there was no necessity of passing any order of detention In support of such contention, several decisions were brought to our notice. Even though some of the decisions may prima facie support the contention, we are unable to accept such contention. It has been laid down in various decisions of the Supreme Court as well as this Court that when a person is in custody, there may not be any justification for passing an order of detention unless the detaining authority on the materials on record comes to the conclusion that there is imminent possibility of the detenu being released on bail. Rationale of such decisions is crystal clear. If a person is inside the prison, obviously there is no possibility of such person acting in a manner prejudicial to the maintenance of public order. However, where there is imminent

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

possibility of such person being coming out on bail, obviously there may be apprehension that such person may act in a manner prejudicial to the maintenance of public order after he is being released on bail. Since, in the present case, the detenu was in prison, obviously the detaining authority found that there was no necessity of passing any detention order and only when there was imminent possibility of being released on bail, the necessity of passing of order of detention arose. The decisions relied upon by the petitioner cannot be understood to lay down a general principle that in every case when there is some gap between the date of the incident or the date of the arrest and the subsequent date of passing the order of detention, the subjective satisfaction regarding necessity to detain is vulnerable. Where the detenu is already released on bail and yet the detaining authority takes long time for passing the order of detention, it may be reasonably inferred that on the facts and circumstances of the particular case that there is no live-link and, therefore, there was no necessity to pass the order of detention. Such general principle obviously would not apply in a case where the detenu is inside the prison in connection with a case. Because in such a case the requirement for passing a detention order arise only when the detaining authority on materials on record comes to the conclusion that there is imminent possibility of being released on bail. Therefore, this submission is not acceptable.

10. The other submission of the petitioner, to the effect that the alleged occurrence on the basis of which a case under Section 392 IPC has been registered related to the question of mere law and order and not public order however, stands on a stronger footing. It is obvious that the detaining authority based his conclusion on the basis of offence under Section 392 IPC allegedly committed on 21.8.2006. Topography of the place where such occurrence took place was available in the booklet furnished. Prima facie it does not indicate that occurrence took place in a busy public place nor there is anything to show that it took in the presence of several persons likely to cause panic among the general public. The manner in which occurrence is said to have taken place indicates that it is a case of "law and order" situation rather than "public order" situation. Keeping in view the setting and the manner in which the alleged occurrence was committed, we are of the considered opinion that the incident related to a law and order situation rather than a public order situation and the subjective satisfaction of the detaining authority is vitiated so far as this aspect is concerned.

11. It is no doubt true an adverse case was registered under Section 302 IPC, but the manner in which the offence has been committed is not available on record and moreover the detaining authority has relied upon such incident only for the purpose of coming to the conclusion that the detenu is a Goonda and not for the purpose of coming to the conclusion that such action was detrimental to the maintenance of public order. In view of the above conclusion, the detention order is liable to be quashed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

12. A reading of the counter affidavit indicates as if according to the District Collector the occurrence took place in the morning hours. In para-D of the counter affidavit, it is indicated that crimes were committed on 19.8.06 & 22.8.06, whereas the FIR as well as the grounds of detention indicate as if the ground case took place on 21.8.06. The assertion in para-E of the counter affidavit indicates that detaining authority has apparently accepted the report furnished by the Inspector of Police, wherein the Inspector of Police has stated that Naveen habitually involved in theft, kidnapping, robbery, dacoity and involved in murder. As already noted, from para-D of the counter affidavit it is apparent that detention order is passed on the basis of ground case alone. The ground case referred to is Section 392 IPC, which is apparent from a reading of pargraphs 3 and 4 of the grounds of detention. That offence under Section 392 IPC alone was considered for the purpose of coming to the conclusion regarding acting in a manner prejudicial to the maintenance of public order is also apparent from other paragraphs of the counter affidavit. The possible explanation that the expression "morning hours" in the counter affidavit may be a typographical mistake has to be discounted in view of the assertion made in para-L at page 6 of the counter affidavit that "Naveen stole Rs.500/- at knife point from Prabhu of Padur on 21.8.2006. He has committed this grave crime in public place in the morning hours." The subsequent assertions made on oath in the counter affidavit clearly establish that the detaining authority is now trying to give a separate justification regarding the manner in which he had arrived at the subjective satisfaction.

13. In our considered opinion, such subsequent contradictory explanation given as justification in the counter affidavit, which is on oath, clearly establishes that at the time when the detention order was passed, sufficient attention has not been bestowed by the detaining authority. It is no doubt true that detention order is based on subjective satisfaction. However, since the facts now stated in the counter affidavit are at times diametrically opposed to the facts narrated in the grounds of detention, it is clear non-application of mind on the part of the detaining authority.

14. For the aforesaid reason, we are constrained to quash the order of detention. Since an order of detention has the effect of depriving liberty of a citizen, as observed by Baghawati, J in AIR 1980 SC 1183 (SMT. ICCHU DEVI CHORARIA v. UNION OF INDIA AND OTHERS), scrupulous care should be observed before passing any order of detention. In the present case, the subsequent counter filed by the detaining authority on oath belies many of the aspects which seems to have been recited mechanically in the grounds of detention.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

15. For the aforesaid reasons, the order of detention is quashed and the detenu shall be released forthwith unless his presence is required in any other case.

dpk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. State of Tamil Nadu,
   Rep. by its Secretary to Government,
   Prohibition & Excise Department,
   Fort St. George, Secretariat,
   Chennai 600 009.

2. The District Collector & District
   Magistrate,
   Tiruvallur District,
   Tiruvallur.

3. The Superintendent, Central Prison,
   Puzhal, Chennai.
   (In duplicate for Communication to Detenue)

4. The Joint Secretary to Government,
   Public (Law & Order),
   Fort St.George, Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

6. The Inspector of Police,
   B7, Vellavedu Police Station,
   Thiruvallur District.

+1 cc to Mr.L.Vinoth Kumar, Advocate Sr.No.49517.

AD(CO)
dcp/17.8

HCP.NO.212/2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/